IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 160 OF 2005

Shri Sitaram Vishwanath Shirodkar,
S/o Vishwanath Shirodkar,
aged 30 years, unmarried,
resident of House No. 170,
Borda, Margao - Goa. ..... Petitioner

V/S

1. Smt. Shashikala Hari Redkar,
   widow of late Hari Redkar,
   major of age, housewife,

2. Shri Jivan Hari Redkar,
   Son of Hari Redkar,
   major of age,
   unmarried, business,

3. Shri Narayan Hari Redkar,
   Son of Hari Redkar,
   major of age,
   unmarried,

4. Miss Sital Hari Redkar,
   daughter of Hari Redkar,
   major of age,
   unmarried,
   all r/o Police Quarters,
   Sadar, Ponda - Goa. ..... Respondents

Mr. R. G. Ramani, advocate for the petitioner.

Mr. S. D. Padiyar, advocate for respondent nos.1 to 4.

CORAM : R. M. LODHA, J.

DATE : 2nd September, 2005.

ORAL JUDGMENT

Heard. Rule. Returnable forthwith. The advocate for the respondent nos.1 to 4 waives service. By consent Rule is heard finally at this stage.

2. From the available material it does appears that the petitioner who is the original plaintiff in Special Civil Suit No.67/96/A was not diligent in leading the evidence and that despite fair opportunity granted to him he did not conclude his evidence resulting in closure of his evidence by the Order dated 23rd August, 2004.

3. The petitioner-plaintiff made an application for recalling the Order dated 23rd August, 2004 but the same came to be dismissed by the impugned Order.

4. During the course of the hearing, the learned counsel for the petitioner submitted that the petitioner is prepared to compensate the inconvenience caused to the respondents by paying reasonable costs. The learned counsel for the respondents submitted that enough opportunity was given to the plaintiff but he failed to avail of the same. He, however, left the matter to the Court. Taking overall facts and circumstances of the case into

consideration, I am satisfied that the interest of justice shall be subserved if one opportunity is granted to the petitioner-plaintiff for production of his evidence, subject to the payment of costs as may be fixed in the order.

5. Rule is accordingly disposed of by the following Order:-

(1) Subject to the petitioner (plaintiff) paying the costs of Rs.10,000/- (rupees ten thousand only) to the respondents (defendants) within three weeks from today, the Order dated 23rd August, 2004 shall stand recalled and the Order dated 21st March, 2005 shall stand set aside.

(2) On the date or the dates that may be fixed by the trial Court, the petitioner shall be permitted to lead his evidence. If on the date/dates so fixed by the trial Court, the plaintiff does not lead his evidence, the plaintiff's evidence shall stand closed and no further opportunity shall be granted.

(3) In default of payment of the costs of Rs.10,000/- within the aforestated time, the plaintiff shall not be granted any opportunity of leading his evidence and the Orders dated 23rd

August, 2004 and 21st March, 2005 shall stand as they are.

Order accordingly.

R. M. LODHA, J.

mc.